

1 JOHN J. KADLIC
Reno City Attorney
2 JACK D. CAMPBELL
Deputy City Attorney
3 Nevada State Bar #4938
Post Office Box 1900
4 Reno, NV 89505
(775) 334-2050
5 *Attorneys for City of Reno, Reno Police*
6 *Department, Keith Pleich, Daniel Bond,*
7 *And Scott Rasmussen*

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 DENISE ABBEY, individually, and as special
11 administrator of the ESTATE OF MICAH ABBEY,

Case No.: 3:13-cv-00347-VPC-LRH

12 Plaintiffs,

13 vs.

14 CITY OF RENO; RENO POLICE
15 DEPARTMENT; KEITH PLEICH individually
and in his official capacity as a Police Officer for
16 CITY OF RENO and RENO POLICE
DEPARTMENT; DANIEL BOND individually
17 and in his official capacity as a Police Officer for
CITY OF RENO and RENO POLICE
18 DEPARTMENT; SCOTT RASMUSSEN
19 individually and in his official capacity as a
Police Officer for CITY OF RENO and RENO
20 POLICE DEPARTMENT; BRAD
DEMITROPOULIS;
21 And DOES through X, inclusive.

22 Defendants.

23
24 **DEFENDANTS CITY OF RENO, RENO POLICE DEPARTMENT, KEITH PLEICH,**
25 **DANIEL BOND, AND SCOTT RASMUSSEN'S**
26 **ANSWER TO THE THIRD AMENDED COMPLAINT**

27 COMES NOW, Defendants CITY OF RENO, RENO POLICE DEPARTMENT, KEITH
28 PLEICH, DANIEL BOND, AND SCOTT RASMUSSEN'S, (hereinafter CITY OF RENO), by

1 and through their attorneys, JOHN J. KADLIC, Reno City Attorney and JACK D. CAMPBELL,
2 Deputy Reno City Attorney, hereby answers Plaintiff's Third Amended Complaint by admitting,
3 denying and averring as follows.

4 **(Introduction)**

- 5 1. CITY OF RENO denies the allegations in Paragraph No. 1.

6 **(Jurisdiction and Venue)**

- 7 2. CITY OF RENO admits to this Court's jurisdiction for the instant action but
8 denies the remaining allegations in Paragraph No. 2.
9 3. CITY OF RENO admits the venue is properly vested with this Court pursuant to
10 Paragraph No. 3.

11 **(Parties)**

- 12 4. CITY OF RENO is without knowledge or information sufficient to form a belief
13 as to the truth or falsity of the remaining allegations in Paragraph No.4.
14 5. CITY OF RENO is without knowledge or information sufficient to form a belief
15 as to the truth or falsity of the allegations in Paragraph No. 5.
16 6. CITY OF RENO admits that it is a municipality organized as such pursuant to the
17 laws of the State of Nevada, but denies the remaining allegations in Paragraph
18 No. 6.
19 7. CITY OF RENO admits to the allegations in Paragraph No. 7
20 8. CITY OF RENO is without knowledge or information sufficient to form a belief
21 as to the truth or falsity of the allegations in Paragraph No. 8.
22
23 9. CITY OF RENO admits that KEITH PLEICH is an Officer with the Reno Police
24 Department. CITY OF RENO is without knowledge or information sufficient to
25 form a belief as to the truth or falsity of the remaining allegations in Paragraph
26 No. 9.
27 10. CITY OF RENO admits that DANIEL BOND is an Officer with the Reno Police
28 Department. CITY OF RENO is without knowledge or information sufficient to

1 form a belief as to the truth or falsity of the remaining allegations in Paragraph
2 No. 10.

3 11. CITY OF RENO admits that SCOTT RASMUSSEN is an Officer with the Reno
4 Police Department. CITY OF RENO is without knowledge or information
5 sufficient to form a belief as to the truth or falsity of the remaining allegations in
6 Paragraph No. 11.

7 12. CITY OF RENO is without knowledge or information sufficient to form a belief
8 as to the truth or falsity of the allegations in Paragraph No. 12.

9 13. CITY OF RENO is without knowledge or information sufficient to form a belief
10 as to the truth or falsity of the allegations in Paragraph No. 13. Furthermore,
11 CITY OF RENO reserves the right to amend this Answer should Plaintiff name
12 any additional party as identified in this paragraph.

13 14. CITY OF RENO denies the allegations in Paragraph No. 14.

14 15. CITY OF RENO admits to the allegations in Paragraph No. 15.

15 16. CITY OF RENO has no objection to the Complaint being pled in the alternative
16 pursuant to Fed.R.Civ.P. 8(d)(2).

17
18 **(Factual Background)**

19 17. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
20 16, above, as if set forth herein verbatim.

21 18. CITY OF RENO is without knowledge or information sufficient to form a belief
22 as to the truth or falsity of the allegations in Paragraph No. 18.

23 19. CITY OF RENO is without knowledge or information sufficient to form a belief
24 as to the truth or falsity of the allegations made regarding Micah Abbey's mental,
25 physical, and emotional conditions, but denies the remaining allegations that the
26 CITY OF RENO knew or should have known about said conditions.
27
28

- 1 20. CITY OF RENO is without knowledge or information sufficient to form a belief
2 as to the truth or falsity of the allegations in Paragraph No. 20.
- 3 21. CITY OF RENO is without knowledge or information sufficient to form a belief
4 as to the truth or falsity of the allegations in Paragraph No. 21.
- 5 22. CITY OF RENO is without knowledge or information sufficient to form a belief
6 as to the truth or falsity of the allegations in Paragraph No. 22.
- 7 23. CITY OF RENO is without knowledge or information sufficient to form a belief
8 as to the truth or falsity of the allegations in Paragraph No. 23.
- 9 24. CITY OF RENO is without knowledge or information sufficient to form a belief
10 as to the truth or falsity of the allegations in Paragraph No. 24.
- 11 25. CITY OF RENO is without knowledge or information sufficient to form a belief
12 as to the truth or falsity of the allegations in Paragraph No. 25.
- 13 26. CITY OF RENO is without knowledge or information sufficient to form a belief
14 as to the truth or falsity of the allegations in Paragraph No. 26.
- 15 27. CITY OF RENO is without knowledge or information sufficient to form a belief
16 as to the truth or falsity of the allegations in Paragraph No. 27.
- 17 28. CITY OF RENO is without knowledge or information sufficient to form a belief
18 as to the truth or falsity of the remaining allegations in Paragraph No. 28.
- 19 29. CITY OF RENO is without knowledge or information sufficient to form a belief
20 as to the truth or falsity of the allegations in Paragraph No. 29.
- 21 30. CITY OF RENO denies allegations in Paragraph No. 30.
- 22 31. CITY OF RENO is without knowledge or information sufficient to form a belief
23 as to the truth or falsity of the allegations in Paragraph No. 31.
- 24
- 25
- 26
- 27
- 28

1 32. CITY OF RENO is without knowledge or information sufficient to form a belief
2 as to the truth or falsity of the allegations in Paragraph No. 32.

3 33. CITY OF RENO is without knowledge or information sufficient to form a belief
4 as to the truth or falsity of the allegations in Paragraph No. 33.

5 34. CITY OF RENO is without knowledge or information sufficient to form a belief
6 as to the truth or falsity of the allegations in Paragraph No. 34
7

8 35. CITY OF RENO denies the allegations in Paragraph No. 35.

9 36. CITY OF RENO denies the allegations in Paragraph No. 36.

10 37. CITY OF RENO denies the allegations in Paragraph No. 37.

11 38. CITY OF RENO denies the allegations in Paragraph No. 38.

12 39. CITY OF RENO denies the allegations in Paragraph No. 39.

13 40. CITY OF RENO denies the allegations in Paragraph No. 40.

14 41. CITY OF RENO denies the allegations in Paragraph No. 41.

15 42. CITY OF RENO denies the allegations in Paragraph No. 42.

16 43. CITY OF RENO admits that Defendants removed the RIPP restraints and
17 handcuffs, and started cardio pulmonary resuscitation as alleged in Paragraph No.
18

19 43. CITY OF RENO denies the allegations about the Reno Fire Department's and
20 Remsa's success.
21

22 44. CITY OF RENO is without knowledge or information sufficient to form a belief
23 as to the truth or falsity of the allegations in Paragraph No.44.

24 45. CITY OF RENO is without knowledge or information sufficient to form a belief
25 as to the truth or falsity of the allegations in Paragraph No. 45.
26

27 46. CITY OF RENO denies the allegations in Paragraph No. 46.
28

1 47. CITY OF RENO admits to the allegations in Paragraph No. 47.

2 48. CITY OF RENO denies the allegations in Paragraph No. 48.

3 49. CITY OF RENO denies the allegations in Paragraph No. 49.

4 50. CITY OF RENO denies the allegations in Paragraph No. 50.

5 51. CITY OF RENO denies the allegations in Paragraph No. 51.

6 52. CITY OF RENO denies the allegations in Paragraph No. 52.

7
8 **COUNT I**

9 (Violation of 42 U.S.C.A § 1983)

10 53. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
11 52, above, as if set forth herein verbatim.

12 54. CITY OF RENO denies the allegations in Paragraph No. 54.

13 55. CITY OF RENO denies the allegations in Paragraph No. 55, including
14 subsections a-e.

15 56. CITY OF RENO denies the allegations in Paragraph No. 56.

16 57. CITY OF RENO denies the allegations in Paragraph No. 57.

17 58. CITY OF RENO denies the allegations in Paragraph No. 58.

18 59. CITY OF RENO denies the allegations in Paragraph No. 59.

19
20
21 **COUNT II**

22 (Violation of 42 U.S.C.A § 1983)

23 (MONELL CLAIM)

24
25 60. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
26 59, above, as if set forth herein verbatim.

1 61. CITY OF RENO denies the allegations in Paragraph No. 61, including
2 subsections a-h.

3 62. CITY OF RENO denies the allegations in Paragraph No. 62.

4 63. CITY OF RENO denies the allegations in Paragraph No. 63.

5 64. CITY OF RENO denies the allegations in Paragraph No. 64.

6 65. CITY OF RENO denies the allegations in Paragraph No. 65.

7 66. CITY OF RENO denies the allegations in Paragraph No. 66.

8 67. CITY OF RENO denies the allegations in Paragraph No. 67

9 68. CITY OF RENO denies the allegations in Paragraph No. 68; including
10 subsections a-j.

11 69. CITY OF RENO denies the allegations in Paragraph No. 69.

12
13
14 **COUNT III**

15 **(NEGLIGENCE)**

16 70. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
17 69, above, as if set forth herein verbatim.

18 71. CITY OF RENO is without knowledge or information sufficient to form a belief
19 as to the truth or falsity of the allegations in Paragraph No. 71.

20 72. CITY OF RENO is without knowledge or information sufficient to form a belief
21 as to the truth or falsity of the allegations in Paragraph No. 72.

22 73. CITY OF RENO is without knowledge or information sufficient to form a belief
23 as to the truth or falsity of the allegations in Paragraph No. 73.

24 74. CITY OF RENO is without knowledge or information sufficient to form a belief
25 as to the truth or falsity of the allegations in Paragraph No. 74.

1 75. CITY OF RENO denies the allegations in Paragraph No. 75

2 76. CITY OF RENO denies the allegations in Paragraph No. 76.

3 **COUNT IV**

4 (ASSAULT AND BATTERY)

5 77. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
6 77, above, as if set forth here in verbatim.

7 78. CITY OF RENO denies the allegations in Paragraph No. 78.

8 79. CITY OF RENO denies the allegations in Paragraph No. 79.

9 **COUNT V**

10 (WRONGFUL DEATH)

11 80. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
12 79, above, as if set forth here in verbatim.

13 81. CITY OF RENO is without knowledge or information sufficient to form a belief
14 as to the truth or falsity of the factual allegations in Paragraph No. 81.

15 82. CITY OF RENO is without knowledge or information sufficient to form a belief
16 as to the truth or falsity of the factual allegations in Paragraph No. 82.

17 83. CITY OF RENO is without knowledge or information sufficient to form a belief
18 as to the truth or falsity of the factual allegations in Paragraph No. 83.

19 84. CITY OF RENO denies the allegations in Paragraph No. 84.

20 //

21 //

22 //

23 //

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 Micah Abbey knowingly, voluntarily, and unreasonably assumed the risk of the conduct,
4 events, and matters alleged in the Complaint such that any damages or injuries sustained by
5 Plaintiffs were the direct, proximate, and legal result of the risks so assumed.

6 **SECOND AFFIRMATIVE DEFENSE**

7 The Plaintiff s' injuries and damages alleged in the Complaint were caused by
8 independent, intervening causes and not by any negligence, act, omission, or other conduct,
9 intentional or otherwise, on the part of the CITY OF RENO.

10 **THIRD AFFIRMATIVE DEFENSE**

11 During the time of the incident alleged in the Complaint, Plaintiffs have failed to conduct
12 themselves as a reasonable person would if confronted with the same facts and circumstances.
13 Therefore, Plaintiffs have failed to mitigate their damages.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Plaintiffs' damages were caused by the conduct of independent third parties which the
16 CITY OF RENO could not directly influence or control. Therefore, CITY OF RENO is not
17 responsible or liable for such independent third party actions. Furthermore, CITY OF RENO
18 reserves the right to amend this pleading should the identity of these third parties become known.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 The Complaint fails to state a claim against the CITY OF RENO upon which relief may
21 be granted.

22 //

23 //

SIXTH AFFIRMATIVE DEFENSE

Micah Abbey failed to conduct himself as a reasonable person would facing the same facts and circumstances. Abbey was negligent in and about the matters alleged in the complaint, and such negligence directly, proximately and legally contributed to the injuries and damages such that Abbey's comparative negligence is greater than the negligence of the CITY OF RENO, and the combined negligence of all named defendants thereby barring recovery by the Plaintiff pursuant to NRS 41.141.

SEVENTH AFFIRMATIVE DEFENSE

CITY OF RENO is immune from liability in this matter pursuant to NRS 41.032.

EIGHTH AFFIRMATIVE DEFENSE

The award of punitive damages is not recoverable against the City of Reno and the named individuals in their official capacity.

NINTH AFFIRMATIVE DEFENSE

The Reno Officers are entitled to qualified immunity.

TENTH AFFIRMATIVE DEFENSE

Defendants are granted qualified, discretionary, and good faith immunity to the claims made herein.

ELEVENTH AFFIRMATIVE DEFENSE

CITY OF RENO cannot be held liable for the acts alleged herein pursuant to NRS 41.0336.

TWELTH AFFIRMATIVE DEFENSE

After reasonable investigation and inquiry, the CITY OF RENO believes the affirmative defenses presented herein are applicable, subject to the obligations set forth in the FRCP 11.

1 CITY OF RENO reserves the right to amend this pleading to include any additional or further
2 affirmative defenses as their basis becomes known and relevant.

3 WHEREFORE, DEFENDANT CITY OF RENO prays for judgment as follows:

- 4 1. That Plaintiff takes nothing by reason of her Complaint, and that the same be
5 dismissed with prejudice.
6
7 2. For an award of all costs and fees incurred in presenting a defense herein.
8
9 3. For an award of all attorney's fees incurred in presenting a defense herein.
10
11 4. For any additional or further relief this Court may deem just and proper.

12 DATED this 31st day of October, 2013.

13 JOHN J. KADLIC
14 Reno City Attorney

15
16 By: /s/ Jack D. Campbell

17 JACK D. CAMPBELL
18 Deputy City Attorney
19 Nevada State #4938
20 Post Office Box 1900
21 Reno, Nevada 89505
22 (775) 334-2050
23 *Attorneys for City of Reno,*
24 *Reno Police Department,*
25 *Keith Pleich, Daniel Bond,*
26 *and Scott Rasmussen*
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

 X CM/ECF electronic service

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Richard Salvatore, Esq.
HARDY LAW GROUP
96 & 98 Winter Street
Reno, NV 89503
Fax – (775) 322-2303
Attorney for Plaintiff

Cal J. Potter, III
Potter Law Offices
1125 Shadow Lane
Las Vegas, NV 89102-2314
Fax – (702) 385-9081
Attorney for Plaintiff

Gary Cardinal, Esq.
Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/ MS 0550
Reno, NV 89557
Attorney for Brad Demitropoulos

DATED this 31st day of October, 2013.

/s/ Katie Wellman

Katie Wellman

Legal Assistant